



## **OMBUDSMAN ASSESSMENT REPORT**

Regarding Community and Civil Society concerns in relation to  
IFC's Agri-Vie Fund project (#27674)

April 2012

*Office of the Compliance Advisor / Ombudsman  
International Finance Corporation  
Multilateral Investment Guarantee Agency*  
[www.cao-ombudsman.org](http://www.cao-ombudsman.org)

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**LIST OF ACRONYMS**

CAO	Compliance Advisor/Ombudsman
GoU	Government of Uganda
IFC	International Finance Corporation
LC	Local Council
MIGA	Multilateral Investment Guarantee Agency
NFA	National Forestry Authority, Uganda
NFC	New Forests Company
RDC	Regional District Commissioner
UIA	Uganda Investment Authority
ULA	Uganda Land Alliance

## 1. Introduction

The Office of the Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The purpose of CAO's assessment is to: (1) clarify the issues and concerns raised in the complaint; (2) gather information on how relevant stakeholders see the situation; and (3) help stakeholders understand and determine whether a collaborative solution is possible through a process facilitated by CAO's Ombudsman, or whether the case should be dealt with through CAO Compliance.

This report summarizes the assessment carried out by the CAO, which assessment included a field trip to Uganda between February 6 - 10, 2012, with follow up meetings on March 14-16, 2012. It is a summary of the views heard by the CAO team, and explanations of next steps depending upon whether the parties are willing to engage in a CAO Ombudsman process or whether the complaint will be dealt with through CAO Compliance. *This report does not make any judgment on the merits of the complaint and the issues therein.*

As per CAO's Operational Guidelines<sup>1</sup>, the following steps will normally be followed in response to a complaint that is received:

- Step 1:       **Acknowledgement** of receipt of the complaint
  - Step 2:       **Eligibility:** Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days)
  - Step 3:       **Ombudsman assessment:** Assessment of the issues and provision of support to stakeholders in understanding and determining whether a collaborative solution is possible through a facilitated process by CAO Ombudsman, or whether the case should be transferred to CAO Compliance for appraisal of IFC's/MIGA's social and environmental performance. The assessment time can take up to a maximum of 120 working days.
  - Step 4:       **Facilitating settlement:** If the CAO Ombudsman process continues, this phase involves initiation of a dispute resolution process (typically based or initiated by a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other significant issues relevant to the complaint that were identified during the assessment or the problem-solving process, in a way that is acceptable to the affected parties.
- OR
- Step 5:       **Compliance Appraisal/Audit:** If complainants decide that a compliance review be conducted instead, CAO Compliance will initiate an appraisal of IFC's/MIGA's social and environmental due diligence of the project in question to determine whether a compliance audit of IFC's/MIGA's intervention of the project is merited.
  - Step 5:       **Monitoring** and follow-up

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<sup>1</sup> For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.cao-ombudsman.org/about/whoweare/index.html>

## Step 6: **Conclusion/Case closure**

Upon a careful review of the December 2011 complaint filed by affected community members and supporting NGOs in relation to an investment made by Agri-Vie Agribusiness Fund – a client of IFC, the CAO determined that the complaint met its three complaint eligibility criteria on January 4, 2012:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Subsequently, according to CAO's Operational Guidelines, the CAO Ombudsman began the assessment of the complaint.

### **2. The Complaint**

In December 2011, affected community representatives, with the support of Oxfam International, Oxfam Great Britain, and the Uganda Land Alliance, submitted a complaint to the CAO on behalf of community members affected by the New Forests Company's Namwasa plantation in Mubende District ("Namwasa") and Luwunga Plantation which straddles the Kiboga and Kyankwanzi Districts ("Luwunga"), Uganda.

The complaint raises concerns about forced evictions and displacement in the plantation area. Representatives of the affected communities claim that the evictions have negatively impacted their communities by displacing them from land, destroying their private property, and forcing them to forgo health, education, and livelihood opportunities. The complaint also voices broader concerns about the due diligence surrounding the project, including the lack of genuine or meaningful consultation around the evictions, the lack of a baseline study or survey to accompany the process, and the lack of due diligence on the part of IFC and the company. The complaint makes specific reference to violations of IFC's Performance Standards 1, 4 and 5.

Some representatives of the affected communities also state that they have experienced violence against themselves, their families, and their personal property on the part of security forces, which they believe belong to or cooperated with the company.

The following requests are raised in the complaint:

- A comprehensive livelihood restoration plan be developed with the participation of the affected communities;
- Meaningful recognition of and redress for their lost property and economic resources;
- Recognition and redress for the nature of the evictions and for the abuses they have suffered;
- A compliance review of the project by CAO Compliance.

### **3. The Project**

Agri-Vie Agribusiness Fund, a client of IFC, is an agribusiness private equity fund with the purpose of making growth equity and equity related investments in food agribusiness companies in Sub-Saharan Africa. The fund seeks to make investments in commercially attractive agribusiness projects with sound environmental and social practices. The fund was initiated by SP-aktif and Sanlam Private Equity with the cooperation of South African and

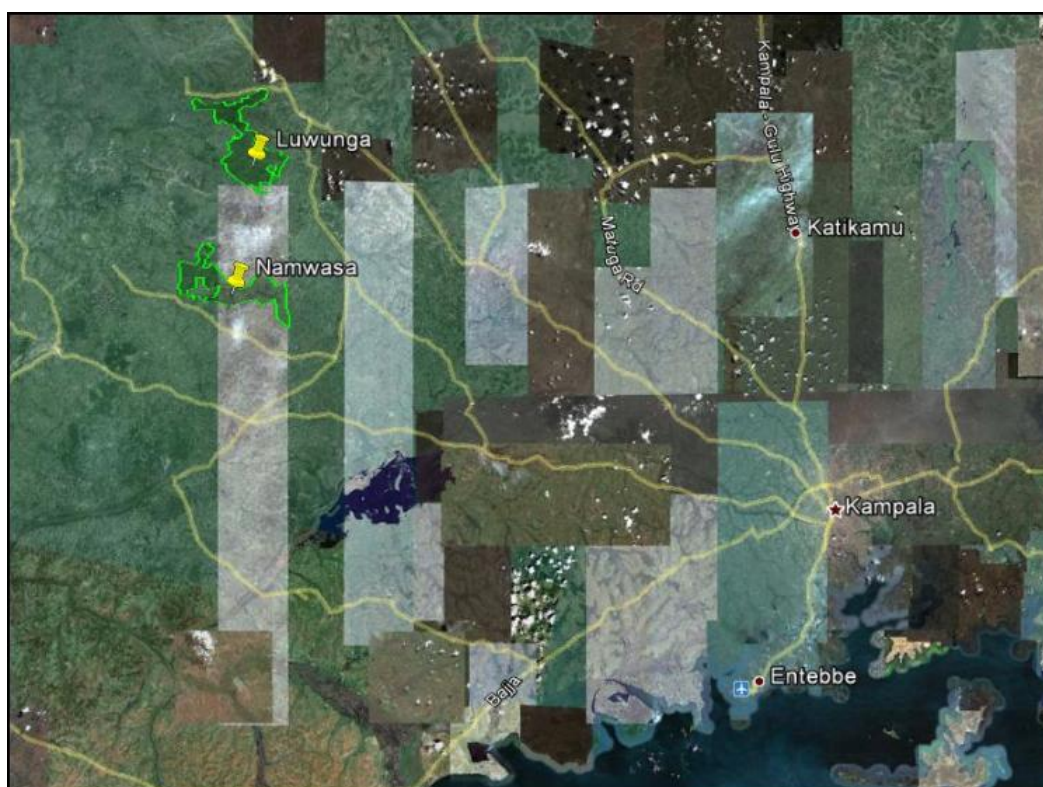
international investors as well as the Makotulo Consortium.<sup>2</sup> The fund is constituted through a public protected cell company incorporated in Mauritius and a South African En Commandite Partnership. The fund is managed by AA Fund Managers, incorporated in Mauritius, which draws on advice from Agri-Vie Investment Services, incorporated in South Africa. The target size of the fund is \$100 million, with an IFC equity investment of \$12.2 million for an 11.5% stake. According to IFC's procedures the project is categorized as environmental category FI.

The Fund has a \$9.42 million investment in New Forest Company Holding (NFC)<sup>3</sup> for an 8.83% equity stake.

New Forests Company (NFC) is a UK-based forestry company operating established and growing timber plantations in Eastern Africa. Founded in 2004, NFC began with forestry and timber operations in Uganda in 2005, and now also has operations in Mozambique, Rwanda and Tanzania.<sup>4</sup>

In Uganda, NFC has more than 20,000 hectares of forestry land and operates three pine and eucalyptus plantations in the Mubende, Kiboga and Bugiri districts. By the middle of 2011 NFC had planted more than 10,400 hectares of pine and eucalyptus. By the end of 2011, the company planned to plant an additional 2.8 million trees, bringing its total tree stock to approximately 14 million (or 11,300 hectares). The trees, pine and eucalyptus, aim to supply sawn timber, as well as construction lumber, electricity transmission poles and bio-energy including charcoal.<sup>5</sup>

The figures below illustrate the location of the plantations.<sup>6</sup>



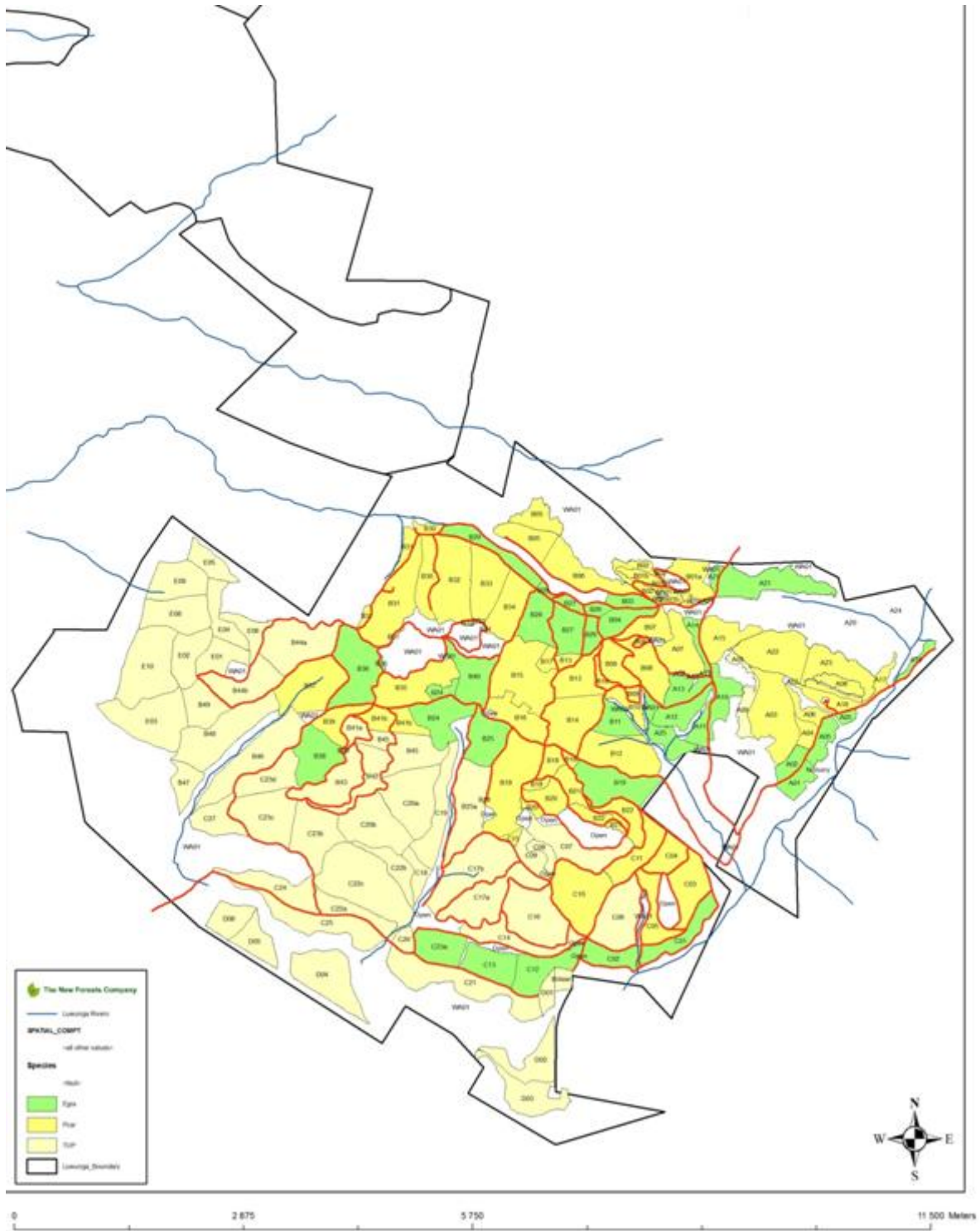
<sup>2</sup> <http://www.agrivie.com/partners.html>

<sup>3</sup> <http://www.agrivie.com/news20.html>

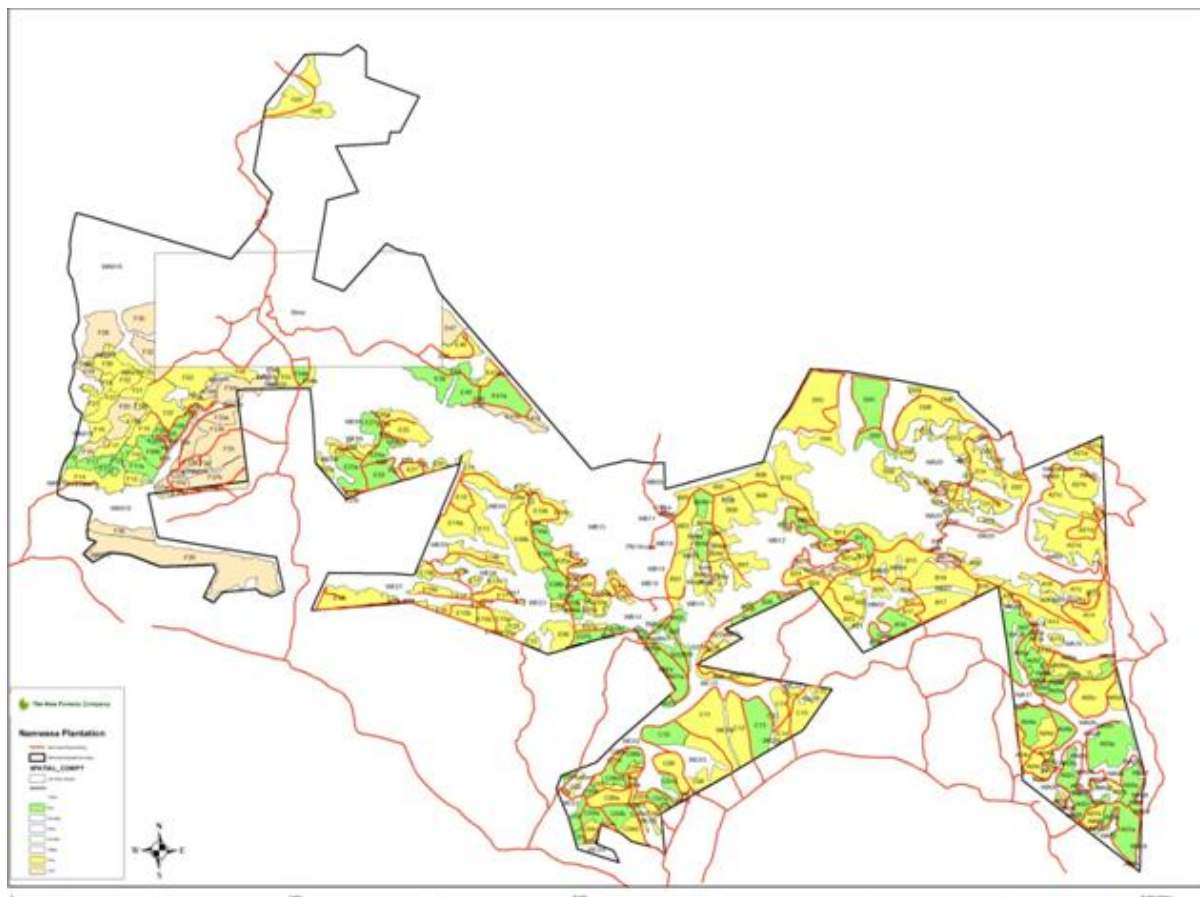
<sup>4</sup> <http://www.agrivie.com/investments.html>

<sup>5</sup> [http://www.newforests.net/index.php/hmd\\_article/team-management](http://www.newforests.net/index.php/hmd_article/team-management)

<sup>6</sup> Maps provided by NFC.



## Uganda – Namwasa Plantation



## 4. CAO'S Assessment

### 4.1 Methodology

As stated previously, the purpose of CAO's assessment is to: (1) clarify the issues and concerns raised in the complaint; (2) gather information on how relevant stakeholders see the situation; and (3) help stakeholders understand and determine whether a collaborative solution is possible through a process facilitated by CAO's Ombudsman, or whether the case should be dealt with through CAO Compliance. *The CAO Ombudsman does not gather information in order to make a judgment on the merits of the complaint.*

The CAO assessment of the Agri-Vie complaint consisted of:

- reviewing IFC project documentation
- reviewing documents provided by various stakeholders, including NFC, Oxfam, Uganda Land Alliance and the affected communities
- telephonic and in-person interviews prior to and during visits to Uganda
- meeting with:
  - representatives from the affected communities evicted from Luwunga and Namwasa plantations
  - Oxfam and ULA
  - NFC
  - District government representatives
  - Representatives of the National Forestry Authority (NFA)
  - A representative of the Uganda Investment Agency (UIA)



## 4.2 Summary of Issues and/or Concerns

The primary claim made by the affected community representatives is that members of the affected community were evicted from land now licensed to NFC by the Ugandan government. Issues have been raised emanating from the evictions and the manner in which they were carried out. Concerns were also raised regarding NFC's current operational practices, such as utilising school buildings for NFC operations. Broadly, the issues raised by the affected community members may be summarised as follows:

- *Historical damages*, in that crops and/or homes were destroyed as a result of the evictions.
- *Process concerns*, in that there was no adequate prior consultation with members of the affected communities before the evictions were carried out, and that the evictions were carried out with a degree of violence in some instances. Further, in some instances questions regarding the application of Ugandan law have not been properly addressed.
- *Existing social and economic hardships*, in that members of the affected communities do not have access to land and so cannot cultivate crops or generate an income. School fees cannot be paid and there is no place for the affected community members to bury their dead. Public buildings formally utilized as schools or clinics are being utilized by NFC to conduct its operations.

In essence, NFC claims that it operates under the laws of the constitution of Uganda and the legal and contractual obligations of licenses to operate granted by the National Forestry Authority (NFA), including performing Environmental Impact Assessments approved by the National Environmental Management Authority, developing management plans and protecting the forest reserves from any illegal or harmful activities. NFC has consulted with households within and outside the borders of the reserves, with government officials and community development partners. According to NFC, to date it has invested a substantial amount into sustainable, long-term community development projects benefiting thousands of households, including those that have resettled outside of the plantation into surrounding villages. NFC also raised concerns about alleged arson attacks by the project affected community in Namwasa and the general lack of adherence to the rule of law by some members of the affected community. NFC does not assume any direct responsibility for the evictions and claims that it was not involved in carrying out the evictions and was explicitly excluded by the government.

There are other community members who were evicted from the Namwasa and Luwunga plantations who believe such evictions were warranted since they were not legally entitled to be farming and/or residing on the forestry reserves.

As the government entity that has jurisdiction to effect evictions in accordance with Ugandan law, the NFA claims responsibility for the evictions from the Namwasa and Luwunga plantations.

After discussing the various options available in terms of CAO's Operational Guidelines with the affected community representatives, Oxfam, ULA and NFC, a unanimous decision was taken for the CAO Ombudsman to conduct a dispute resolution process. As part of designing this strategy, all the stakeholders deem it important for representatives from the Ugandan Government to be consulted regarding the complaint and any process initiated by CAO in terms of its dispute resolution function.

## 5. Conclusions and next steps

CAO Ombudsman has commenced a dispute resolution process. Representatives from the affected communities, Oxfam, ULA and NFC attended a joint meeting facilitated by CAO in Mityana, Uganda, in March 2012 to confirm their commitment to dispute resolution and to start the mediation process. A CAO mediation process is now underway with the parties participating in joint meetings and confidential bilaterals at this stage.